

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: :
:
MICHAEL GEORGE SCHWENTNER and: CHAPTER 13
JOY N. SCHWENTNER, :
:
Debtors : BKRTCY. NO. 16-11037 REF

STIPULATION AND AGREED ORDER RE: PROOFS OF CLAIM NUMBERED 5 AND 6
FILED BY AMERISERV FINANCIAL BANK

The Debtors and Ameriserv Financial Bank, by and through their attorneys, request the Court to enter this Agreed Order with respect to the treatment of Proofs of Claim numbered 5 and 6 filed by Ameriserv Financial Bank, and agree as follows:

1. Debtors are Michael and Joy Schwentner, residing at 4285 Scheidy's Road, Whitehall, Lehigh County, Pennsylvania 18052.
2. Claimant is Ameriserv Financial Bank ("AFB"), with an address of 216 Franklin Street, Johnstown, Pennsylvania, 15901-1911. AFB is represented in this case by Grenen & Birsic, One Gateway Center, 9th Floor, Pittsburgh, PA 15222.
3. Debtors filed a Voluntary Petition for Relief under Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. §101, et seq., to the above term and number.
4. This Court has jurisdiction over this proceeding

pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b).

5. In March, 2016, Debtors filed a Motion to Value Real Estate with respect to their residential real estate on Scheidys Road in Whitehall, PA, and served all mortgagees and lien creditors. Only Embassy Bank filed a responsive pleading.

6. That Motion was concluded with the entry of an Agreed Order dated May 18, 2016, valuing the Debtors' Scheidys Road property at \$300,000.

7. The Debtors' Scheidys Road property is subject to a first mortgage in favor of US Bank/SPS in the amount of \$304,648.33 (see POC #14) and two junior mortgages as well.

8. AFB has filed two Proofs of Claim in this case:

a. POC #5, amount: \$116,246.13: This claim is filed as secured based on a filed complaint to confess judgment in Lehigh County, which judgment was granted and entered on November 7, 2014 to No. 2014-N-1240; and

b. POC #6, amount: \$28,521.76: This claim is filed as secured based on a filed complaint to confess judgment in Lehigh County, which judgment was granted and entered on November 7, 2014 to No. 2014-N-1239.

9. The parties agree that as of the time of the filing of this Agreed Order that the Debtors' residence has a fair market

value of \$300,000.00.

10. The first mortgage debt with US Bank/SPS exceeds the current fair market value of the Scheidys Road property.

11. Similarly, with respect to Debtors' other real estate in Lehigh County, that is, 1065 3rd Street, Whitehall, PA, the value of the existing mortgages in favor of Bank Of America (\$82,155.62) and Embassy Bank (\$250,000) greatly exceed the value of the 3rd Street property.

12. Accordingly, there is no equity in any property in Lehigh County to which the judicial liens can attach, and the AFB Proofs of Claim are capable of resolution in the fashion agreed to in this Agreed Order.

13. Pursuant to 11 U.S.C. §506(a), AFB has a secured claim only to the extent of the value of the collateral, and any prior liens must be deducted from the fair market value of the collateral in computing the amount of the putative secured creditor's allowed claim.

14. The junior judicial liens of AFB are completely unsecured, and therefore avoidable.

15. AFB agrees to amend POC's numbered 5 and 6 to general, unsecured claims and, as such, will be entitled to disbursement from the Trustee along with other such creditors.

16. AFB agrees to release its liens against Debtors' real

estate upon the completion of Debtors' case and entry of a Discharge Order by this Court, by filing a Praecipe to Satisfy Judgment for both judicial liens referred to herein, that is, Lehigh County Nos. 2014-N-1239 and 2014-N-1240, once the case is concluded and a Discharge Order has been filed in this case discharging the Debtors from their debts.

17. In accordance with Section 349(b)(1)(B), 11 U.S.C. Section 349(b)(1)(B), which provides that dismissal of this case reinstates any lien avoided under Section 522, AFB shall not be obligated to satisfy the AFB judicial liens in the event that Debtors' case is dismissed.

18. Having been fully informed of the terms of this Stipulation and Agreed Order, and having been advised by counsel, the parties request the Court to enter this Agreed Order. The parties authorize the Court to act upon their facsimile signatures or e-signatures if affixed hereto.

19. The Court shall retain jurisdiction to the extent necessary to enforce this Agreement and Order.

20. In the event that AFB fails or refuses to satisfy its judgments under the conditions contained herein, this Agreed Order specifically authorizes counsel for Debtor to file a certified copy of this Order along with a Praecipe to Satisfy in

the Lehigh County public records, after first providing 20 days' written notice to AFB and its counsel.

**LAW OFFICES OF
KEVIN K. KERCHER, ESQUIRE, P.C.**

Date: 10/24/2016

/s/ Kevin K. Kercher
Kevin K. Kercher, Esquire
881 Third Street, Suite #C-2
Whitehall, PA 18052
Attorney for Debtors

AMERISERV FINANCIAL BANK

Date: 10/21/16

By: /s/ Bruce A. Mabon
Bruce A. Mabon, Vice President
216 Franklin St.
Johnstown, PA 15901-1911

GRENN & BIRSIC

Date: 10/24/16

/s/ Brian Kile
Maureen Dowd, Esq.
Brian Kile, Esq.
One Gateway Center, 9th Floor
Pittsburgh, PA 15222
Attorneys for Ameriserv Financial Bank

IT IS SO ORDERED:

RICHARD E. FEHLING, U.S.B.J.